

AMENDED IN SENATE AUGUST 4, 2016

AMENDED IN SENATE JUNE 9, 2016

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AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2337

Introduced by Assembly Member Burke

(Coauthor: Senator Jackson)

February 18, 2016

An act to amend Section 230.1 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2337, as amended, Burke. Employment protections: victims of domestic violence, sexual assault, or stalking.

Existing law prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work for specified purposes related to addressing the domestic violence, sexual assault, or stalking. Existing law provides that any employee who is discharged, threatened with discharge, demoted, suspended, or in any manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for those purposes is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief, and is allowed to file a complaint with the Division of Labor Standards Enforcement

within the Department of Industrial Relations. Existing law establishes the Labor Commissioner as the head of the Division of Labor Standards Enforcement.

This bill would require employers to inform each employee of his or her rights established under those laws by providing specific information in writing to new employees upon hire and to other employees upon request. The bill would also require the Labor Commissioner, on or before July 1, 2017, to develop a form an employer may elect to use to comply with these provisions and to post it on the commissioner's Internet Web site. Employers would not be required to comply with the notice of rights requirement until the commissioner posts the form.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 230.1 of the Labor Code is amended to
2 read:

3 230.1. (a) In addition to the requirements and prohibitions
4 imposed on employees pursuant to Section 230, an employer with
5 25 or more employees shall not discharge, or in any manner
6 discriminate or retaliate against, an employee who is a victim of
7 domestic violence, sexual assault, or stalking for taking time off
8 from work for any of the following purposes:

9 (1) To seek medical attention for injuries caused by domestic
10 violence, sexual assault, or stalking.

11 (2) To obtain services from a domestic violence shelter,
12 program, or rape crisis center as a result of domestic violence,
13 sexual assault, or stalking.

14 (3) To obtain psychological counseling related to an experience
15 of domestic violence, sexual assault, or stalking.

16 (4) To participate in safety planning and take other actions to
17 increase safety from future domestic violence, sexual assault, or
18 stalking, including temporary or permanent relocation.

19 (b) (1) As a condition of taking time off for a purpose set forth
20 in subdivision (a), the employee shall give the employer reasonable
21 advance notice of the employee's intention to take time off, unless
22 the advance notice is not feasible.

23 (2) When an unscheduled absence occurs, the employer shall
24 not take any action against the employee if the employee, within

1 a reasonable time after the absence, provides a certification to the
2 employer. Certification shall be sufficient in the form of any of
3 the categories described in paragraph (2) of subdivision (d) of
4 Section 230.

5 (3) To the extent allowed by law and consistent with
6 subparagraph (D) of paragraph (7) of subdivision (f) of Section
7 230, employers shall maintain the confidentiality of any employee
8 requesting leave under subdivision (a).

9 (c) An employee who is discharged, threatened with discharge,
10 demoted, suspended, or in any other manner discriminated or
11 retaliated against in the terms and conditions of employment by
12 his or her employer because the employee has taken time off for
13 a purpose set forth in subdivision (a) is entitled to reinstatement
14 and reimbursement for lost wages and work benefits caused by
15 the acts of the employer, as well as appropriate equitable relief.
16 An employer who willfully refuses to rehire, promote, or otherwise
17 restore an employee or former employee who has been determined
18 to be eligible for rehiring or promotion by a grievance procedure
19 or hearing authorized by law is guilty of a misdemeanor.

20 (d) (1) An employee who is discharged, threatened with
21 discharge, demoted, suspended, or in any other manner
22 discriminated or retaliated against in the terms and conditions of
23 employment by his or her employer because the employee has
24 exercised his or her rights as set forth in subdivision (a) may file
25 a complaint with the Division of Labor Standards Enforcement of
26 the Department of Industrial Relations pursuant to Section 98.7.

27 (2) Notwithstanding any time limitation in Section 98.7, an
28 employee may file a complaint with the division based upon a
29 violation of subdivision (a) within one year from the date of
30 occurrence of the violation.

31 (e) An employee may use vacation, personal leave, or
32 compensatory time off that is otherwise available to the employee
33 under the applicable terms of employment, unless otherwise
34 provided by a collective bargaining agreement, for time taken off
35 for a purpose specified in subdivision (a). The entitlement of any
36 employee under this section shall not be diminished by any term
37 or condition of a collective bargaining agreement.

38 (f) This section does not create a right for an employee to take
39 unpaid leave that exceeds the unpaid leave time allowed under, or
40 is in addition to the unpaid leave time permitted by, the federal

1 Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et
2 seq.).

3 (g) For purposes of this section:

4 (1) “Domestic violence” means any of the types of abuse set
5 forth in Section 6211 of the Family Code, as amended.

6 (2) “Sexual assault” means any of the crimes set forth in Section
7 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269,
8 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code,
9 as amended.

10 (3) “Stalking” means a crime set forth in Section 646.9 of the
11 Penal Code or Section 1708.7 of the Civil Code.

12 (h) (1) Employers shall inform each employee of his or her
13 rights established under this section and subdivisions (c), (e), and
14 (f) of Section 230 in writing. The information shall be provided
15 to new employees upon hire and to other employees upon request.

16 (2) The Labor Commissioner shall develop a form that an
17 employer may use to comply with the notice requirements in
18 paragraph (1). The form shall set forth the rights and duties of
19 employers and employees under this section in clear and concise
20 language. The Labor Commissioner shall post ~~this~~ *the* form on the
21 commissioner’s Internet Web site to make it available to employers
22 who are required to comply with this section. If an employer elects
23 not to use the form developed by the Labor Commissioner, the
24 notice provided by the employer to the employees shall be
25 substantially similar in content and clarity to the form developed
26 by the Labor Commissioner. The Labor Commissioner shall
27 develop the form and post it in accordance with this paragraph on
28 or before July 1, 2017.

29 (3) Employers shall not be required to comply with paragraph
30 (1) until the Labor Commissioner posts the form on the
31 commissioner’s Internet Web site in accordance with paragraph
32 (2).